where an appellate court, lacking the advantage of seeing and hearing the witness, was justified in coming to such a conclusion on credibility. Certainly, the fact that the trial judge's note of Omar's evidence contained after one sentence in brackets the words "corrects evidence" could not possibly provide such justification. Their Lordships have no reason to think that the trial judge "has not taken proper advantage of his having seen and heard the witnesses" (see *Watt or Thomas* v. *Thomas*[8] *per* Lord Thankerton) and they regard it as unthinkable that he would have failed to make clear that he rejected Omar's testimony had he not been satisfied as to its acceptability. The learned judge manifestly regarded it as acceptable, and the Board see no reason why it should do otherwise. Nor, in its judgment, should the Federal Court. If Omar's evidence *is* accepted, counsel for the respondent concedes that his client is bound to fail in this appeal. He is right in making that concession, and their Lordships will accordingly tender to the Yang Dipertuan Agung the advice that the plaintiff's appeal should be allowed, the Order of the Federal Court set aside and the Order of the trial judge restored and that the respondent should pay the costs of the appeal to the Federal Court and of this appeal.

Appeal allowed.

Solicitors: *Wilson Freeman; Garters.*

SINGAPORE REPORTS

WORKERS' PARTY v. TAY BOON TOO & ANOR.

[C.A. (Wee Chong Jin C.J., Winslow and Kulasekeram JJ. July 22, 1975]
[Singapore — Civil Appeal No. 41 of 1974]

Defamation — Libel and Slander — Allegation that plaintiffs received money from a foreign country for its election campaign — Speech delivered in Hokkien — Absence of proof of original words — Whether words were defamatory — True or false innuendo.

In this case the appellant had instituted proceedings for slander against the first respondent and libel against the second respondent. It was alleged that the first respondent had stated in a speech at a public rally "that the plaintiff had received a sum of $600,000 from sources outside Singapore for its election expenses". It was also alleged that the Department of Broadcasting had published a statement allegedly made by the first respondent to the same effect. The first respondent had given his speech in Hokkien but no proof of the original or actual words in Hokkien was given. It was also argued that the words used in the broadcast meant and were intended to mean that the plaintiff was acting in the interest of persons who were not citizens of Singapore and that the plaintiff's motives in contesting the election were questionable as to whether they were genuinely to serve the interests of the citizens of Singapore or foreigners. The learned trial judge dismissed the action ([1975] 1 M.L.J. 47) and the appellant appealed to the Court of Appeal.

Held, dismissing the appeal: (1) the learned trial judge was entitled and was indeed bound to regard the absence of proof of the original or actual words in Hokkien as fatal to the appellant's claim against the first respondent;

(2) the trial judge was right in deciding that the words in question were incapable of bearing or of being understood to bear the meanings alleged and that in fact, in their natural and ordinary meaning, they were not defamatory of the appellant.

Cases referred to:-

(1) *Rainy* v. *Bravo* (1872) L.R. 4 P.C. 295.

(2) *Capital and Counties Bank Ltd.* v. *Henty & Sons* (1882) 7 S.C. 741.

COURT OF APPEAL.

J. B. Jeyaretnam and *Lee Tow Kiat* for the appellant.

G. S. Hill and *P. Selvadurai* for the first respondent.

Tan Boon Teik (Attorney-General) and *Warren Khoo* (State Counsel) for the second respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): The Workers' Party, the appellant in this appeal, is a political party. Tay Boon Too, the first respondent, is a member of the People's Action Party, another political party. He was the People's Action Party candidate for the Paya Lebar constituency at the general election held on September 2, 1972. At that general election the appellant fielded 27 candidates thereby contesting 27 seats out of 65 seats in Parliament. The People's Action Party fielded candidates for all the seats in Parliament.

At an election rally of the People's Action Party held at Lorong Tai Seng on August 25, 1972 the first respondent, Tay Boon Too, was one of many speakers. On the same evening at its regular 11 p.m. news broadcast the Department of Broadcasting broadcast over the radio edited versions of speeches made at several election rallies held by various political parties at various parts of Singapore. One of the edited versions broadcast that evening was the speech made by the first respondent at the election rally at Lorong Tai Seng. Some of the items broadcast over the radio at 11 p.m. on 25th August 1972 were repeated in the

regular news broadcast at 6.30 a.m., 7 a.m. and 8 a.m. the next morning. The items containing the edited version of the first respondent's speech was so repeated. That item as broadcast reads as follows: —

"At another P.A.P. rally in Lorong Tai Seng, the P.A.P.'s candidate for Paya Lebar, Mr. Tay Boon Too, accused the Workers' Party of having received 600,000 dollars from a foreign country for its election campaign."

The edited version of the first respondent's speech was prepared from a report in English by a reporter, Law Ah Ta, of the Department of Broadcasting who had attended the rally at Lorong Tai Seng and had heard the first respondent who was speaking in the Hokkien dialect to those present. The reporter took down notes in Chinese in point form and not verbatim and he prepared his report in English from those notes.

The 1972 general election resulted in the People's Action Party winning all the seats in Parliament. On September 1972 the appellant commenced proceedings in the High Court against the first respondent claiming damages for slander. The Statement of Claim, delivered on January 23, 1973, alleged that at the election rally at Lorong Tai Seng held on August 25, 1972 the first respondent published to persons attending the rally defamatory words to the effect "that the plaintiff had received a sum of $600,000 from sources outside Singapore for its election expenses".

On June 15, 1973 the appellant also commenced proceedings against the Department of Broadcasting naming the Attorney-General as the nominal defendant claiming "damages for libel contained in broadcasts and published by the Department of Broadcasting, Ministry of Culture on the 26th August 1972". The Statement of Claim dated the same day alleged that "on the August 26, 1972 the defendant... broadcast and published over its wireless transmission to the public... of and concerning the plaintiff and in relation to its conduct in the said Parliamentary elections a statement allegedly made by one Tay Boon Too on ... August 25, 1972 that the plaintiff had received a sum of $600,000 from sources outside Singapore for its election campaign".

These two actions by the appellant were consolidated and were eventually tried in the High Court before Chua, J. on October 14, 1974. During the trial the appellant successfully applied to amend the Statement of Claim against the first respondent so as to allege that the first respondent at the election rally in question published to persons attending the railly "that the plaintiff had received a sum of $600,000 from Kuala Lumpur for the current election campaign and celebrated its anniversary at the Singapore Malay National Organisation's premises indicating that it is not an independent party and that the Singapore Malay National Organisation is a Kuala Lumpur arm in Singapore which carries out subversive activities".

In a reserved judgment Chua J. dismissed both actions with costs and the appellant appealed to this court. At the conclusion of the appeal we dismissed the appeal and intimated that we would give our reasons at a later date.

We now proceed to give our reasons. The first ground of appeal in the Petition of Appeal concerns the first respondent only and reads as follows: —

"A. The learned judge erred in law and in fact in holding that your petitioner had not proved that the first respondent had uttered and published the words complained of on the night of the 25th August 1972."

The words complained of are pleaded in paragraph 5 of the Amended Statement of Claim in the action against Tay Boon Too, the first respondent, as follows: —

"At a public rally addressed by the defendant at Lorong Tai Seng in the constituency of Paya Lebar on the night of the 25th August the defendant falsely and maliciously spoke and published of and concerning the plaintiff and of it in the way of its said undertaking and in relation to its conduct therein by saying to the persons attending the rally that the plaintiff had received a sum of $600,000 from Kuala Lumpur for the current election campaign and celebrated its anniversary at the Singapore Malay National Organisation's premises indicating that it is not an independent party and that the Singapore Malay National Organisation is a Kuala Lumpur arm in Singapore which carries out subversive activities."

The first respondent, at paragraph 4 of his re-amended Defence, denied the said paragraph 5 of the Amended Statement of Claim and put the appellant to strict proof of the allegations contained therein.

The evidence in support of the appellant's claim consisted of that of Ee Boon Lee, Controller of News in the Department of Broadcasting of the Ministry of Culture who produced the text of a report in English submitted to that Department by its reporter, Law Ah Ta, who was also called to give evidence on behalf of the appellant. Ee Boon Lee was not present at the rally in question although he did admit responsibility for the edited version of the text of Law Ah Ta's report which was subsequently broadcast.

Law Ah Ta's evidence was to the effect that he attended the rally held by the first respondent as the P.A.P. candidate for the constituency of Paya Lebar at which nine speakers spoke including the first respondent who spoke in the Hokkien dialect. He said that he took down notes, in Chinese, of the speech "in point form" but not "verbatim". There were other speeches, some of them in Mandarin, made by other speakers. He said that he submitted to the news editor a report in English which contained accurately what he heard the first respondent say in Hokkien at the rally. He said that he had less than 20 minutes in which to prepare, type and hand in his report. He said that in preparing it he referred to his notebook in which he had previously taken down points in the speech made by the first respondent. The report was a translation into English from the notes he had taken down in point form in Chinese in his notebook. The notebook could not be produced in evidence as he did not have it nor did he know where it was as used notebooks were "put aside", the usual practice being for the office attendant to collect them. He said that he could not remember the "verbatim words" or the exact words used by the first respondent. He said his mother tongue was Hokkien and that he had taken Chinese as a language for the School Certificate examination and passed it.

When taxed in cross-examination as to the words "subversive activities" appearing in his English translation from his notes in Chinese, he was unable to remember the Chinese words used. He was unable to remember any reference to illegality or secret activities leading to the overthrow of the Government. All he could say was that he could have chosen another word but he chose "subversive" as the most suitable word

when he translated the Chinese word he had written in his notebook. There is thus not a shred of evidence as to the actual Chinese word he had so noted.

It should be borne in mind that this witness, though admittedly a reporter in the Department of Broadcasting, gave no evidence about his competence as an interpreter or translator from Hokkien into English and *vice versa* apart from saying that his mother tongue was Hokkien and that he had passed in Chinese at School Certificate level.

The trial judge dealt with this evidence, *inter alia*, as follows: —

"The plaintiff must prove that the words complained of have been published. The plaintiff has called only one witness, Law Ah Ta, who was present at the rally and heard the speech of Tay Boon Too. No other witness who attended the rally and heard Tay Boon Too's speech was called by the plaintiff to prove the speaking of the words. Law Ah Ta has not proved the actual words alleged to have been published. It is clear from his evidence that what he set out in his report Ex. P4 was what he conceived to be the substance or effect of the words or his impression of what was said....

Here the slander alleged was spoken in Hokkien but the words complained of were set out in English in the Amended Statement of Claim. English is the official language of the court and in that context any other language would be a foreign language. If the slander alleged is in a language other than English it must be set out in the Statement of Claim in the foreign language precisely as spoken and followed by a literal translation. It is not enough to set out a translation without setting out the original or vice versa. (*Gatley* on Libel & Slander, 7th Ed. para. 987). While the absence of a translation in the pleadings may not be fatal to the plaintiff's case the absence of the original words in the foreign language in question is....

After the plaintiff has proved the actual words published he must also prove that the translation given in the Statement of Claim is correct by calling an interpreter sworn as a witness (*Gatley*, para. 1207).

I am of the view that the plaintiff in this case has not proved publication of the words complained of."

Counsel for the appellant Mr. J. B. Jeyaretnam, contended that the trial judge was wrong in fact and in law in finding that the publication of the words complained of as set out in the Amended Statement of Claim had not been proved and advanced the proposition that the absence of the Hokkien text of the speech was a mere technicality which could have been resolved by the simple expedient of rendering the English words set up in the pleadings back into Hokkien. He further contended that no translation was required as Law Ah Ta whose mother tongue was Hokkien had supplied the translation as he was a competent interpreter for the purpose of meeting the argument of counsel for the first respondent, Mr. G. S. Hill, that not only must the original words in Hokkien be proved but so must a translation into English of those words so complained of as set out in the pleadings be proved to be correct. In the present appeal, there is no evidence of the actual words alleged to have been spoken in Hokkien and which Law Ah Ta quite candidly said he could not remember.

In our judgment, the trial judge was entitled and indeed was bound to regard the absence of proof of the original or actual words in Hokkien as fatal to the appellant's claim against the first respondent. Law Ah Ta had no recollection whatsoever of the words used in Hokkien and was only able to give evidence of his own translation of the notes he took in Chinese in point form. The words used must be proved and not what a witness conceives to be the substance and the effect of such words. A witness is bound to give the words used, as far as he could recollect them and then the enquiry would be whether his recollection and accuracy could be trusted, and, whether the words he recollected could be relied upon as giving the material words of the slander (see *Rainy* v. *Bravo*[1]).

One would have expected in the circumstances attending the holding of this election rally at which about 200 persons were present that the appellant should have been able to produce at least one or more of the hearers who understood what was being said in Hokkien to given evidence of what words they, to the best of their recollection, actually heard in Hokkien. Where a foreign language is used it is necessary for the appellant to prove the actual words published in that language and the English translation of those words. It was not in dispute that Hokkien is for the purposes of these proceedings, a foreign language. Law Ah Ta could not remember the exact words used in Hokkien. Indeed, at the trial, he was not even asked to give to the best of his recollection the Hokkien words used by the first respondent which the appellant alleges are defamatory.

We accordingly found no merit whatsoever in the contention by counsel for the appellant that the publication of the words complained of had been proved nor any merit in his application for a re-trial "to have issues properly ventilated" — by which we understood him to mean that he wanted a second bite at the cherry in an endeavour to rectify errors and omissions in the appellant's case in relation to the first issue of publication which it was essential for the appellant to prove as against the first respondent. We were satisfied that the trial judge directed himself correctly on the law and arrived at the right conclusions on questions of fact arising for consideration on this issue and accordingly that the appeal against the first respondent must fail.

We now turn to that ground of appeal affecting the second respondent, the Attorney-General for the Department of Broadcasting, which alleges that the trial judge erred in holding that the words complained of were not defamatory. The broadcast words alleged to be defamatory are not directly set out by the appellant in his Statement of Claim in the action against the Attorney-General but are set out in Paragraph 5 of the Defence and they read as follows: —

"At another PAP rally at Lorong Tai Seng the PAP's candidate for Paya Lebar accused the Workers' Party of having received 600,000 dollars from a foreign country for its election campaign."

The appellant in Paragraph 5 of his Statement of Claim pleads as follows: —

"5. The said words meant and were intended to mean that the plaintiff was acting in the interests of persons who were not citizens of Singapore and that the plaintiff's motives in contesting the said elections were questionable as to whether they were genuinely to serve the interests of the citizens of Singapore or foreigners."

It is difficult from this paragraph to discover whether the appellant was relying on a "true" or on a "false" innuendo. If he was relying on a "true" innuendo then by virtue of Order 78 rule 3(i) he must support it by

pleading particulars. The appellant did not plead any particulars and his failure to plead particulars seems to be an indication that he was relying on a "false" as distinct from a "true" or legal innuendo *i.e.* that he was relying on the natural and ordinary meaning of the words together with such inferences as might reasonably be drawn from the words themselves in the light of the ordinary man's knowledge.

However, this ambiguity was resolved at the trial when counsel for the appellant in his opening speech said: —

"Plaintiff has to show the words are defamatory.... To allege that the plaintiff has received $600,000 from foreign sources can only mean one thing, that the Party is at the mercy of paymasters from outside and that immediately calls into question, the honesty, integrity and sincerity of the plaintiff. I submit these words were calculated to do precisely that. It also imputes the height of irresponsibility of the plaintiff. I submit it bears the meaning set out in para. [5] of the Statement of Claim."

During the hearing of the appeal counsel for the appellant confirmed that the appellant was throughout relying on a "false" innuendo as set out in paragraph 5 of his Statement of Claim. Counsel in addressing the court on this ground of appeal, said he was not alleging or relying on an innuendo even in the action against the Attorney-General and he submitted, without distinguishing between the words alleged to have been said by the first respondent at the election rally and the broadcast words, that the broadcast words were defamatory. On this basis paragraph 5 of the Statement of claim in the action against the Attorney-General should have been pleaded as follows: —

"The said words in their natural and ordinary meaning meant and were understood to mean that the plaintiff was acting in the interests of persons who were not citizens of Singapore and that the plaintiff's motives in contesting the said elections were questionable as to whether they were genuinely to serve the interests of the citizens of Singapore or foreigners."

Incomprehensively to us, in support of his submission, counsel contended that the *imputation* is that plaintiff are proxies, agents for foreigners, willing tools of foreigners, allowing themselves to be manipulated by foreigners and to be used against the interests of Singapore citizens.

Nevertheless, we had to consider whether the broadcast words in their natural and ordinary meaning were capable of bearing or of being understood by persons who heard them to bear the meanings for which the appellant contended in paragraph 5 of his Statement of Claim *viz.* (1) that the plaintiff was acting in the interests of persons who were not Singapore citizens, and (2) that the plaintiff's motives in contesting the said elections were questionable as to whether the plaintiff was genuinely to serve the interests of the citizens of Singapore or foreigners. If the words were capable of bearing or of being understood by hearers to bear those meanings without the aid of extrinsic facts, we would then have to consider whether they were defamatory of the appellant.

It is pertinent to observe that during the trial and during the appeal counsel for the appellant never attempted, by argument or through witnesses, to prove that the broadcast words were capable of bearing or of being understood to mean, without the aid of extrinsic facts, the aforesaid two meanings.

The trial judge said at page 134 of the record of appeal that it was not defamatory *per se* to say of a political party that it had received funds, nor "unlawful for a political party to receive money at home or abroad and no right-thinking person would have given the words complained of a defamatory sense in their natural and ordinary meaning". The learned trial judge was then dealing with the words alleged to have been uttered by the first respondent whereas the words broadcast were confined to the receipt of the funds in question albeit from a foreign country and not Kuala Lumpur.

As Lord Selborne said in *Capital and Counties Bank Ltd.* v. *Henty & Sons*,[2] "The test, according to the authorities, is, whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense".

Not one hearer, however, was called to give evidence of what he or she understood the words in question to mean or that he or she drew any inference, in the context of election fever when contestants are not exactly prone to say the most flattering things about their opponents, that the Workers' Party was acting in the interests of persons who were not Singapore citizens with the questionable motives aforesaid.

An allegation that money has been received by a political party for its election expenses from a foreign country is not, as the trial judge found, *per se* defamatory. It could be capable of bearing or of being understood by persons who heard them to bear the alleged meanings only if the ordinary man in the light of his knowledge was prepared to draw the inference that that foreign country was inimical to Singapore and its citizens. The ordinary man would wish to know more about the facts than the bare statement broadcast which would probably only make him at the most less likely than he otherwise would be to cast his vote in favour of a candidate of the Workers' Party. It was most unlikely that the broadcast words would lead him reasonably to draw inferences to the effect that the Workers' Party was acting in the interests of persons who were not citizens with the questionable motives alleged.

In our judgment the trial judge was right in deciding that the words in question were incapable of bearing or of being understood to bear the two meanings alleged and in concluding that, in fact, in their natural and ordinary meaning, they were not defamatory of the appellant.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Rodyk & Davidson.*